used it *"non precario,"* that is, "without variation." If this meaning, so far away from the classical interpretation, has become fixed in our courts, it would be well to make some explanation in a note of such a striking peculiarity.

The difficulty of translating the term *utile* in the phrases *utile interdictum, utile judicium,* etc., seems to have been solved in each case by the use of the word "mandatory". This leads to no serious misapprehension of the effect of the remedy, though it gives us no light on its character either in Sections 219 and 220, where *utile interdictum* is translated "mandatory injunction," or in Section 156, where *utile judicium* is translated "mandatory decree", but in Section 244 we have a mandatory injunction issuing to enforce the "right of being admitted." As a matter of fact, in each case the *utile* is used to describe the process granted to one possessing a *jus in re aliena* as distinguished from the direct process granted an owner.

The author's treatment of the technical term *"bonorum possessor,"* by translating it as "legal representative" and then putting the Latin equivalent in parenthesis, might well have been applied to the handling of other difficult phrases. This obviates any possible misunderstanding that might arise from the fact that the English is not in all respects conterminous in meaning with the technical Latin.

These criticisms are, however, no derogation of the essential merits of the book, and they may be corrected in a second edition which, it is said, will soon be printed, as the present edition is already nearly exhausted. The work is well worth the doing in the present formative period of our law of waters in the Southwest. The borrowing from the Roman law of waters is likely to be from the rules of substantive law on the subject, and this book gives them in an intelligible form. JOSEPH H. DRAKE.

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## RECENT BOOKS ON QUASI-CONTRACTS

CASES ON QUASI-CONTRACTS, edited, with notes and references, by James Brown Scott, A. M., J .U. D., Professor of Law in Columbia University. New York: Baker, Voorhis & Company, 1905. pp. xvi, 772.

SELECTED CASES ON THE LAW OF QUASI-CONTRACTS. By Edwin H. Woodruff, Professor of Law in the College of Law, Cornell University. Indianapolis: The Bobbs-Merrill Company, 1905, pp. xvi, 692.

These two books appeared during the past few months and are valuable contributions to the literature of the subject. There is in them very little duplication of cases, so that each may be said to fairly supplement the other. The cases are well selected and quite thoroughly annotated and are something more than simply illustrative of a comparatively new and developing topic in the law. In the leading law schools of today instruction is given in this subject and the books are primarily intended for the use of students, but they are quite necessary to a resourceful practitioner, ambitious to accomplish the best results through the simplest and most direct remedies.

Professor Scott has undertaken to abridge Professor Keener's cases on the subject to the extent of retaining the more important ones and at the same time bring the book to proportions commensurate with the subject

Professor Ames' classification of the nature and extent of quasi-contract is followed. The first chapter of the book is of exceptional value. It treats of the historical sources of the obligation and gives extracts from leading authors on the Science of Jurisprudence, showing the origin of the quasi-contractual idea.

The editor divides his work into books: Book I. The sources, extent and nature of quasi-contract. Book II. The obligation of quasi-contract. Each book is divided into chapters covering well recognized subdivisions of the subject. The cases selected are arranged in accordance with this plan. This gives the student not simply the case but also its relation to the general subject under consideration.

Professor Scott's book possesses two excusable faults. The same were in Professor Keener's selection. There are perhaps too many old English cases. Many of them are several centuries old. These are of great historical value and we would not call attention to their presence if there were not so many of them. It is difficult to interest the student in short and imperfectly reported cases three or four centuries old.

Professor Keener's cases covered all obligations enforcible through the legal fiction of a promise in the action of assumpsit. Professor Scott has followed him in this respect and over half of the volume before us is given to a selection of cases showing when the breach of an express contract will support the legal fiction in assumpsit. This is a very important question under both the common law and the code system of pleading. There is a marked distinction, however, between an obligation imposed by law and the legal fiction through which it is enforced. The promise may be false but the obligation is real. Any consideration of the quasi-contractual obligation apart from the remedy provided for its enforcement would be inadequate, but, in our judgment, the remedy ought not to be regarded as the main source of the obligation.

In his book of cases Professor Woodruff divides the subject into three parts: I. Recovery upon a record. II. Recovery upon a statutory, or official or customary duty. III. Recovery upon the doctrine of unjust enrichment. In this way he covers the field quite satisfactorily and within reasonable limits. Professor Ames' valuable article on the *History of Assumpsit* is given as an appendix. The work is compiled on the theory that the principle "that one person shall not unjustly enrich himself at the expense of another", is the foundation of the great bulk of quasi contracts. The principle is borrowed from equity and enforced through the legal fiction of a promise. The editor, however, keeps clearly before the student by way of illustrative cases this principle and the resulting obligation. In his table of cases Professor Woodruff includes the cases cited in his annotations. This is a good thing to do. It is very helpful to the practitioner. In this way the annotations become briefs of cases on a case in hand.

Both works are excellent in those things which make a book useful; its table of contents, table of cases and index. J. C. KNOWLTON.